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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

LA BREA WILLOUGHBY COALITION, a)	CASE NO.: 19STCP04083
California nonprofit Public Benefit)	
Corporation;)	VERIFIED PETITION FOR WRIT OF
)	MANDATE AND COMPLAINT FOR
Petitioner,)	DECLARATORY RELIEF
vs.)	
)	(California Public Records Act §§ 6250 et
THE CITY OF LOS ANGELES, a charter)	seq.)
city and municipal corporation; the LOS)	
ANGELES DEPARTMENT OF CITY)	
PLANNING, an advisory agency of the City)	
of Los Angeles;)	
)	
Respondents.)	

1 **INTRODUCTION**

2 1. This Petition for Writ of Mandate is brought by Petitioner, La Brea Willoughby
3 Coalition (“Petitioner”), to compel the City of Los Angeles and its Department of City Planning
4 (collectively “Respondent”), to comply with its duty to disclose public records under the
5 California Public Records Act (Government Code §§ 6250 et seq.).

6 2. Petitioner requested that Respondent provide it with public records relating to
7 when, how, why and through whom certain neighborhood areas in the Wilshire District of Los
8 Angeles were selected for upzoning, as part of the City of Los Angeles’ Metro Purple Line
9 Heavy Rail Subway expansion.

10 3. Respondent is breaching its mandatory duty to comply with the Public Records
11 Act, by improperly withholding records responsive to Petitioner’s request under the “catch-all”
12 exemption located in Government Code (“Gov. Code”) § 6255(a). Respondent is withholding
13 responsive records on the grounds that the records are “drafts” and their disclosure would create
14 a real risk of the public being misinformed as to the components of the City’s plan to upzone
15 certain areas as part of the Purple Line expansion. However, Respondent has actively solicited
16 public comment on this plan and has already disseminated drafts of strategic materials relating to
17 the plan to the public.

18 4. This matter involves issues of substantial public interest. Under the California
19 Public Records Act, the public has the right to access this information upon request. This
20 information can then be used to provide public comment supporting the preservation of zoning
21 laws during the City of Los Angeles’ environmental review of a plan that will result in the
22 upzoning of several neighborhood areas in the Wilshire District.

23 **PARTIES**

24 5. Petitioner, La Brea Willoughby Coalition, incorporated as a California
25 nonprofit Public Benefit Corporation, is a neighborhood association that represents homeowners,
26 renters, and businesses in the La Brea–Willoughby neighborhood of Hollywood. It has been and
27 continues to be involved in protecting the quality of life of its members and preserving the City’s
28 zoning laws, as well as the character and scale of the neighborhoods that it represents. La Brea

1 Willoughby Coalition is a member of the public under the Public Records Act.

2 6. Respondent, City of Los Angeles is a charter city and a municipal corporation
3 within the State of California.

4 7. Respondent, Department of City Planning, is an agency of the City of Los
5 Angeles and a local and public agency under the California Public Records Act.

6 **JURISDICTION AND VENUE**

7 8. Jurisdiction is proper in this court. Petitioner's claim arises under California
8 state laws and the acts or omissions complained of herein occurred in the County of Los
9 Angeles. This court has subject-matter jurisdiction over this case, pursuant to Gov. Code §
10 6259(a), because the records being sought are situated within Los Angeles County.

11 9. This case is properly classified as unlimited civil and is therefore, within the
12 jurisdiction of this court because it is not one of the types of cases listed as a limited civil case in
13 Civil Code §§ 85 or 86.

14 10. This court has personal jurisdiction over Respondent because Respondent is a
15 local government agent of California.

16 11. Venue is proper in this court under Code of Civil Procedure § 394, because this
17 is an action against the City of Los Angeles, and such actions may be tried in the county where
18 the city is located. In addition, Gov. Code § 6259 allows venue in the Superior Court of the
19 County where the records sought, or some part thereof, are situated.

20 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

21 12. No administrative remedies are available to Petitioner. There is no right to an
22 administrative appeal under the California Public Records Act. (Gov. Code §§ 6250 et seq.)
23 Thus, Petitioner has no adequate remedy at law, unless the Court grants the relief requested
24 herein.

25 **STATEMENT OF FACTS**

26 **A. The Comprehensive Zoning Plan of the City of Los Angeles**

27 13. The Comprehensive Zoning Plan for the City of Los Angeles, located in
28 Article 2 of the Los Angeles Municipal Code ("LAMC") §§ 12.00 et seq., is intended to

1 “[r]egulate and restrict the location and use of buildings, structures and land...”; “[r]egulate and
2 limit the...**size of buildings** and other structures...”; and “[l]imit the **density of population**; and
3 for said purposes to divide the City into zones of such number, shape and area as may be deemed
4 best suited to carry out these regulations and provide for their enforcement.” (LAMC §
5 12.02.)(Emphasis added.)

6 14. “[S]uch regulations are deemed necessary in order to encourage the most
7 appropriate use of land;...**to prevent undue concentration of population...and to promote**
8 **health, safety, and the general welfare all in accordance with the comprehensive plan.**”
9 (LAMC § 12.02 [emphasis added].)

10 **B. The Metro Purple Line Heavy Rail Subway Transit Neighborhood Plan**

11 15. In the middle of 2012, The City of Los Angeles approved a project to extend
12 the Metro Purple Line Heavy Rail Subway (“Purple Line”) from the current terminus at
13 Wilshire/Western into the Westwood area of Los Angeles. The project will result in the
14 construction of seven new stations along Wilshire Boulevard. The City seeks to increase the
15 number of residents living in close proximity to these planned stations. To incentivize the
16 development of affordable housing located near major transit stops, Measure JJJ was passed by
17 Los Angeles voters in September 2016.

18 16. Based on the approval of Measure JJJ, the City established the Transit Oriented
19 Communities Affordable Housing Incentive Program (“TOC” or “TOC Program”). The TOC
20 Program has been codified in Los Angeles Municipal Code (“LAMC”) § 12.22.A.31 and
21 provides that certain affordable housing developments are eligible for general plan amendments
22 and zoning changes (i.e. incentives) (*Ibid.*) These incentives consist of increased density and
23 reduced minimum square feet per dwelling unit, reduced floor area ratio and reduced parking for
24 the development of certain affordable housing projects within “Affordable Housing Incentive
25 Areas” or areas located near (within one-half mile) of a major transit stop, as that term is defined
26 by Public Resources Code § 21155(b). (LAMC § 12.22.A.31(b)(2).)

27 17. In relation to the Purple Line, the City seeks to apply the TOC program to
28 development around three of the planned extension stations: the Wilshire/La Brea Station; the

1 Wilshire/Fairfax Station; and the Wilshire/La Cienega Station. To this end, the City has selected
2 certain neighborhoods around these stations that will be subject to less restrictive zoning and
3 land-use regulation than ordinarily required. The City is in the process of reviewing and
4 approving the regulatory changes that will allow select parcels within these neighborhood areas
5 to be “upzoned”. The tool through which the City will implement these changes is the Purple
6 Line Transit Neighborhood Plan (“TNP”).

7 18. The TNP has not been approved by the City of Los Angeles and is currently
8 undergoing environmental review as required by the California Environmental Quality Act, a
9 state law. As part of and to improve its TNP environmental review process, Respondent has
10 conducted public workshops, open houses, public surveys and generally solicited public
11 comment. At least 24 outreach and public engagement events have been organized and
12 conducted as part of the TNP environmental review process.

13 19. As part of its TNP environmental review process, Respondent has also
14 disseminated city materials to the public. The materials contained Respondent’s strategies for
15 implementing the TNP and included, but are not limited to: Initial Concept Maps, Corridor
16 Vision Maps, maps of overlays and recent planning efforts and TOC maps – **all disseminated to**
17 **the public before the TNP has received final approval**. These preliminary maps identify three
18 residential neighborhood areas that will be subject to the TOC incentive program
19 (“Neighborhood Areas”). One of those neighborhood areas is the Citrus Neighborhood Area, or
20 the neighborhood area running along Citrus Avenue, bounded by San Vicente Boulevard, La
21 Brea Boulevard, Highland Avenue and Edgewood Place.

22 20. The disseminated City materials reveal more than just the neighborhood areas
23 subject to upzoning. For example, the Corridor Vision Map reveals that, in implementing the
24 TNP, the City will consider protection of neighborhoods with a high percentage of rent-stabilized
25 apartments and consider additional density while ensuring compatibility with the existing pattern
26 of development, massing and prominent architectural features.

27 21. The Livability Strategy discloses the City’s intent to retain existing rent-
28 stabilized units.

1 22. The Initial Concept Map discloses that the City intends to preserve and protect
2 rent-stabilized multifamily residential areas with unique character by requiring consistent design
3 of buildings, but will also allow a mix of larger apartment buildings, fourplexes and duplexes
4 consistent with existing building forms and prominent architectural features.

5 23. Finally, the TOC Map shows that the majority of the Citrus Neighborhood
6 Area is outside of any of the zones representing the various incentive eligibility “tiers” created
7 by the City.

8 **C. The California Public Records Act**

9 24. The California Public Records Act is codified in Gov. Code §§ 6250 et seq. In
10 enacting the Public Records Act, the legislature of California declared that “[m]indful of the
11 right of individuals to privacy...access to information concerning the conduct of the people’s
12 business is a fundamental and necessary right of every person in this state.” (Gov. Code § 6250.)

13 25. Gov. Code § 6252(e) states in relevant part that “‘Public records’ includes any
14 writing containing information relating to the conduct of the public’s business prepared, owned,
15 used, or retained by any state or local agency regardless of physical form or characteristics.”

16 26. Gov. Code § 6252(g) states “‘Writing’ means any handwriting, typewriting,
17 printing, Photostatting, photographing, photocopying, transmitting by electronic mail or
18 facsimile, and every other means of recording upon any tangible thing any form of
19 communication or representation, including letters, words, pictures, sounds, or symbols, or
20 combinations thereof, and any record thereby created, regardless of the manner in which the
21 record has been stored.”

22 27. Gov. Code § 6253(c) states in relevant part “Each agency, upon a request for a
23 copy of records, shall, within 10 days from receipt of the request, determine whether the request,
24 in whole or in part, seeks copies of disclosable public records in the possession of the agency and
25 shall promptly notify the person making the request of the determination and the reasons
26 therefor...”

27 28. Gov. Code § 6253(b) states in relevant part “Except with respect to public
28 records exempt from disclosure by express provisions of law, each state or local agency, upon a

1 request for a copy of records that reasonably describes an identifiable record or records, shall
2 make the records promptly available to any person...”

3 29. Gov. Code § 6253(a) states that “Any reasonably segregable portion of a
4 record shall be available for inspection by any person requesting the record after deletion of the
5 portions that are exempted by law.”

6 30. An agency’s failure to raise an exemption waives the right to tender policy
7 arguments logically assigned to them. (*Citizens for a Better Environment v. Department of Food*
8 *& Agriculture* (1985) 171 Cal. App.3d 704, 715-716.)

9 31. Gov. Code § 6255(a) contains a “catch-all” exemption which requires that
10 “The agency shall justify withholding any record by demonstrating... that on the facts of the
11 particular case the public interest served by not disclosing the record clearly outweighs the public
12 interest served by disclosure of the record.”

13 **D. Petitioner’s Public Records Act Request**

14 32. Petitioner sent a November 19, 2018 California Public Records Act request
15 (“CPRA request”) to Respondent for all records, reports, emails, notes, meeting records, intra-
16 agency memoranda and decisions relating to the multi-family residential neighborhood areas
17 identified in the TNP maps.

18 33. On December 12, 2018, Respondent indicated it may have responsive records
19 and subsequently produced approximately 2,187 pages of records, which primarily consisted of
20 public comment and did not include the items requested in Petitioner’s November 19, 2018
21 CPRA request. Respondent’s December 12th response **did not claim any exemptions to**
22 **disclosure of the requested records.**

23 34. The non-responsive record production led Petitioner to believe that Respondent
24 may not have understood the scope of the November 19, 2018 CPRA request. Accordingly, on
25 January 7, 2019, Petitioner, through its attorneys, sent a follow-up CPRA letter clarifying that
26 Petitioner sought reports, emails, notes, correspondence, meeting records and intra-agency
27 memoranda regarding the TNP and the City’s plan to upzone the neighborhood areas identified
28 on the TNP maps.

1 35. On January 17, 2019, Respondent indicated it had records responsive to the
2 CPRA request. Respondent produced the same approximate 2,187 pages of records that it
3 produced with its December 12th response, but also produced additional documents in various
4 formats. The new documents did not include Petitioner's requested items.

5 36. Respondent's January 17th letter also **claimed responsive documents were**
6 **being withheld under Gov. Code § 6255.** The letter indicated that records were being withheld
7 because they were "[d]rafts and remain exempt under Government Code Section 6255 because
8 the public interest served by not disclosing the records clearly outweighs the public interest
9 served by their disclosure."

10 37. In an effort to give the benefit of the doubt to Respondent, on March 27, 2019,
11 Petitioner sent another follow up letter that further clarified the documents that Petitioner was
12 seeking.

13 38. On April 2, 2019, Respondent answered, claiming it had already produced all
14 responsive documents. Respondent, reiterated that it was withholding responsive public records
15 based **on the "catch all" exemption contained in Gov. Code § 6255.** Respondent indicated
16 that "[t]hese drafts represent preliminary ideas and thoughts related to the policy initiative and do
17 not reflect that[sic] final policy direction provided by City management or the City's decision
18 makers. **Producing such documents would create the real risk of the public being**
19 **misinformed as to the components of the policy initiative.** Through the release of various
20 documents and through numerous public workshops, the public has been provided with staff's
21 initial recommendations related to this policy initiative and an opportunity to provide input on
22 them. This process will continue until such time that staff finalizes its recommendations to the
23 City's decision makers." ([Emphasis added].)

24 39. In a final attempt to facilitate the production of responsive records, on June 4th,
25 2019, Petitioner sent a letter to Respondent specifying that the Petitioner sought records relating
26 to how, when, why and through whom the neighborhood areas were selected for inclusion on the
27 TNP maps, including: 1) memoranda relating to specifically how, when, why and/or through
28 whom the neighborhood areas were selected for inclusion on the TNP Maps; 2) reports relating

1 to specifically how, when, why and/or through whom the neighborhood areas were selected for
2 inclusion on the TNP Maps; 3) e-mails relating to specifically how, when, why and/or through
3 whom the neighborhood areas were selected for inclusion on the TNP Maps; 4) notes relating to
4 specifically how, when, why and/or through whom the neighborhood areas were selected for
5 inclusion on the TNP Maps; 5) letters relating to specifically how, when, why and/or through
6 whom the neighborhood areas were selected for inclusion on the TNP Maps; and 6)
7 correspondence relating to specifically how, when, why and/or through whom the neighborhood
8 areas were selected for inclusion on the TNP Maps. Petitioner pointed out that, to the extent that
9 Respondent was withholding any of these records from public disclosure, Respondent's asserted
10 interest in withholding the records had not been weighed against the competing public interest
11 favoring disclosure.

12 40. On July 1, 2019, Respondent answered, claiming simply that it had fully
13 responded to Petitioner's CPRA request, conducted a number of public meetings on the project,
14 and made information available to the public. Respondent stated that its July 1st letter constituted
15 the final response to Petitioner's CPRA request.

16 41. Petitioner is informed and believes that, to date, Respondent continues to
17 improperly withhold documents responsive to Petitioner's CPRA request pursuant to the
18 exemption in Gov. Code § 6255(a). Respondent is withholding the records on the grounds that
19 disclosure of the "drafts" would "create a real risk of of public misinformation as to components
20 of the policy initiative", despite having already disseminated draft materials on the policy
21 initiative to the public.

22 42. Gov. Code § 6258 states "Any person may institute proceedings for injunctive
23 or declarative relief or writ of mandate in any court of competent jurisdiction to enforce his or
24 her right to inspect or to receive a copy of any public record or class of public records under this
25 chapter. The times for responsive pleadings and for hearings in these proceedings shall be set by
26 the judge of the court with the object of securing a decision as to these matters at the earliest
27 possible time."

28 43. Gov. Code § 6259(a) states "Whenever it is made to appear by verified petition

1 to the superior court of the county where the records or some part thereof are situated that certain
2 public records are being improperly withheld from a member of the public, the court shall order
3 the officer or person charged with withholding the records to disclose the public record or show
4 cause why he or she should not do so. The court shall decide the case after examining the record
5 in camera, if permitted by subdivision (b) of Section 915 of the Evidence Code, papers filed by
6 the parties and any oral argument and additional evidence as the court may allow.”

7 44. Gov. Code § 6259(b) states “If the court finds that the public official’s decision
8 to refuse disclosure is not justified under Section 6254 or 6255, he or she shall order the public
9 official to make the record public. If the judge determines that the public official was justified in
10 refusing to make the record public, he or she shall return the item to the public official without
11 disclosing its content with an order supporting the decision refusing disclosure.”

12 45. Gov. Code § 6259(d) states “The court shall award court costs and reasonable
13 attorney’s fees to the requester should the requester prevail in litigation filed pursuant to this
14 section.”

15 **FIRST CAUSE OF ACTION**

16 **(Failure to Perform a Mandatory Duty Pursuant to the California Public Records Act)**

17 46. Petitioner realleges and incorporates by reference the allegations contained in
18 the foregoing paragraphs of this Petition into this Cause of Action.

19 47. Respondent is a local and public agency under the California Public Records
20 Act. (Gov. Code §§ 6252(a) and (d).) As such and as the result of its office, Respondent owes a
21 mandatory and statutory duty to members of the public to follow the provisions of the California
22 Public Records Act and to not improperly withhold records. (Gov. Code §§ 6250 et seq.)

23 48. Respondent’s mandatory duty to comply with the California Public Records
24 Act was triggered when Petitioner sent its California Public Records Act request to Respondent.
25 Petitioner’s California Public Records Act request sought records relating to how, when, why
26 and through whom the neighborhood areas were selected for inclusion on the TNP maps that had
27 been produced to the public.
28

1 49. Respondent is failing to comply with the provisions of the California Public
2 Records Act by withholding records responsive to Petitioner’s requests based on the “catch-all”
3 exemption contained in Gov. Code § 6255(a), when its interest in withholding the records does
4 not clearly outweigh the public interest served by disclosure of the records. (Gov. Code §
5 6255(a).)

6 50. Respondent’s interest in withholding the records pursuant to Gov. Code §
7 6255(a) is that the records are “drafts” and “[r]epresent preliminary ideas and thoughts related to
8 the policy initiative and do not reflect that[sic] final policy direction provided by City
9 management or the City’s decision makers. **Producing such documents would create the real
10 risk of the public being misinformed as to the components of the policy initiative.**”

11 However, its undisputed that Respondent has already provided the public with some drafts of the
12 TNP policy that represent preliminary ideas and thoughts related to the policy initiative, in an
13 effort to facilitate public input and comply with its environmental review process. Even though
14 the TNP has not received final approval, Respondent has already distributed multiple
15 preliminary drafts of TNP maps and other strategic materials to the public. (*Ibid.*) The subject of
16 Petitioner’s requests concerns information relating to the neighbored areas that have been
17 included on these publicly disseminated maps. Thus, the interest asserted by Respondent does
18 not justify withholding the records responsive to Petitioner’s California Public Records Act
19 request. The public’s interest in favor of disclosure is significant. The records being withheld
20 relate to the City of Los Angeles’ development, review and approval of the Purple Line Transit
21 Neighborhood Plan: a plan that will subject several neighborhood areas in the Wilshire District
22 to less stringent zoning and land-use regulations than ordinarily required. The records being
23 withheld may reveal issues with the TNP planning process that could be addressed through
24 public comment – something Respondent is actively soliciting. To ensure a robust review
25 process and for public comment to be meaningful, the public must have all the necessary
26 information. The public has the right to access this information upon request and use this
27 information to provide public comment supporting the preservation of zoning laws as part of the
28 TNP environmental review process.

51. Thus, the significance of the interests in favor of disclosure required Respondent to produce all responsive records and not withhold some of them.

52. Petitioner is a member of the public under the California Public Records Act. (Gov. Code § 6250(b)-(c).) Petitioner has a clear, present and beneficial right to the performance of Respondent's duty under the California Public Records Act because Petitioner requested, in writing, disclosure of the aforementioned records pursuant to the California Public Records Act.

53. Petitioner is prejudiced by Respondent's actions. Petitioner has no plain, speedy, and adequate remedy at law. Petitioner will be denied access to records to which it is otherwise entitled, unless the Court grants the relief requested herein.

PRAYER FOR RELIEF

Petitioner prays that this Court:

1. Conduct an in-camera review of the records being withheld;
2. Issue a declaration that the records being withheld by Respondent are not exempt under Government Code § 6255;
3. Issue a declaration that Respondent is in violation of the California Public Records Act because it is improperly withholding records responsive to Petitioner's California Public Records Act request under Government Code § 6255;
4. Issue a peremptory Writ of Mandate commanding Respondent to produce to Petitioner, within 10 days, all of the records being withheld;
5. Award attorney's fees against Respondent pursuant to Government Code § 6259;
6. Award litigation expenses and costs of suit against Respondent; and
7. Award such other and further relief as the court may deem just and proper.

DATED: September 19, 2019

VENSKUS & ASSOCIATES, A.P.C.

Jason Garber

Jason Sanders
Attorneys for Petitioner, La Brea Willoughby
Coalition

VERIFICATION

I, the undersigned, declare that I am the president of La Brea Willoughby Coalition, the Petitioner in this action. I have read the foregoing **VERIFIED PETITION FOR WRIT OF MANDATE AND COMPLAINT FOR DECLARATORY RELIEF** and know the contents thereof. The matters stated in the forgoing document are true of my knowledge, expect as to those matters which are stated on information and belief, and as to those matters, I believe them to be true.

Executed on 19 September 2019, at Los Angeles, California.

I declare under penalty of perjury, under the laws of the State of California, that the forgoing is true and correct.


Lucille Saunders